

BEFORE THE
INSURANCE COMMISSIONER
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

AMANDA NICOLE SERRATO,

Respondent.

Case No. LBB 3625-AP (AR)

OAH No. N2007010585

PROPOSED DECISION

This matter was heard before Trevor Skarda, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 16, 2007, in Sacramento, California.

Darrel Secrest, Staff Counsel, represented the Insurance Commissioner of the State of California (complainant).

Amanda Nicole Serrato (respondent) represented herself.

Evidence was received at the hearing on February 16, 2007. The record was left open so that respondent could submit an additional exhibit. Respondent submitted a document from the Superior Court of the County of Los Angeles. It was marked as Exhibit C, and admitted into evidence. Thereafter, on March 2, 2007, the record was closed and the matter was submitted.

FACTUAL FINDINGS

1. On September 28, 2006, respondent filed an application for a license to act as resident life agent in the State of California.
2. On August 17, 2005, in the Pasadena Division of the Superior Court of Los Angeles County, State of California, in Case No. 5PA47075, respondent, upon a plea of nolo contendere, was convicted of theft of property, a violation of Penal Code section 484, subdivision (a), a misdemeanor.

Respondent was sentenced to summary probation for a period of 12 months, ordered to perform 16 hours of community services, ordered to pay fines and restitution in the amount of \$120, and ordered to stay away from the store from which she stole merchandise.

3. The circumstances surrounding the conviction were that on or about July 2, 2005, respondent stole two earrings from Claire's Stores, Inc., located in the Santa Anita Mall. The assistant manager at Claire's saw respondent steal the earrings, followed her out of the store, and detained her until the Arcadia Police arrived. Respondent admitted to the police that she stole the earrings. She told the responding police officer that she came to the mall to purchase a bathing suit at Macy's with her father's store-credit card and identification. She went into Claire's intending to "look around" and stole the earrings. Respondent told the police officer that she did not know why she took them. Respondent was transported to the Arcadia Police Department, booked, and released. Respondent was 18 years old at the time she committed the crime.

4. Some evidence of mitigation was presented. Although respondent took full responsibility for her actions, she explained at the hearing that at the time she stole the earrings, she was living with her father and two siblings in a hotel in Arcadia because her father was unemployed. Respondent had a tumultuous relationship with her father and siblings. She was also hanging out with friends who were in the "partying scene." Although respondent did not drink alcohol or abuse drugs herself, her friends did. She got into an argument with one of her close friends. Respondent went to the mall with a friend, who had a habit of stealing from stores. At the time respondent stole the earrings, her friend was in another store stealing merchandise. Respondent stated that she never stole merchandise before or after July 2, 2005.

5. Significant evidence of rehabilitation was presented. After her arrest, respondent moved out of the hotel with her father and siblings, and moved in with an aunt and uncle. Respondent no longer associates with her father or her siblings. She began attending church and became deeply religious. Respondent completed the court-ordered community service by participating in a youth choir at Holy Family Catholic church. She got a job at a collection agency in August 2005. Respondent disclosed to her employer that she had an "open case" involving theft of merchandise, but was hired nonetheless. Respondent worked at the collection agency until July 2006. She quit her job so that she could take care of her ill grandmother, who passed away a short time later.

In July 2006, Respondent began working for Primerica Financial Services on a part-time basis assisting clients with loan applications. Primerica hired respondent on a full-time basis in November 2006. Respondent submitted a letter from her mentor Raul Gitani, who is also the regional vice president and national sales director of Primerica. Mr. Gitani's letter, dated February 7, 2007, was admitted as administrative hearsay. He wrote that he has known respondent for about six months and that she has grown into a "mature woman" during that time. Mr. Gitani has observed "drastic changes in her attitude, appearance and way of thinking." Mr. Gitani noted that respondent has "established new friends" and "lives in her own apartment" for the first time.

6. Respondent successfully completed all terms of her probation in August 2006. She paid all fines and restitution. On February 6, 2007, her conviction was expunged.

7. Respondent has enrolled in Pasadena Community College since her conviction for theft. Respondent no longer associates with her father or siblings, or any of her friends who are in the "partying scene." She lives on her own. Respondent described in detail her devotion to her new-found religious beliefs. She believes that it is God's plan that she work as an insurance agent so that she can help other people.

8. Although a relatively short time has passed since her conviction for theft, respondent presented as an individual who has successfully changed her attitude. She was embarrassed and remorseful for her criminal conduct. Her testimony was honest and forthright. At no point during her testimony was she defensive, argumentative, nor did she attempt in any way to impeach her conviction. Indeed, respondent was hesitant to explain the circumstances surrounding her conviction because she had assumed full responsibility for her actions, and expressed a willingness to accept any further consequences resulting from her conduct, including denial of the instant application to become a resident life agent. Respondent admitted that if she does not obtain a license, she will be terminated from employment at Primerica; she explained, however, that while she hopes to remain employed at Primerica and very much enjoys her coworkers and her job there, if she is terminated, she will move on to something else.

LEGAL CONCLUSIONS

1. Pursuant to Insurance Code section 1668, subdivision (b), a license may be denied to an applicant if the "granting of the license will be against public interest." It is well settled that convictions of crimes involving fraudulent intent and intentional dishonesty for personal gain establish moral turpitude as a matter of law. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 400-401) Respondent's conviction for theft of property pursuant to Penal Code section 484, subdivision (a), was a crime that necessarily involved both fraudulent intent and intentional dishonesty. Respondent stole merchandise from a store. Respondent's conviction is substantially related to the qualifications, functions and duties of a resident life agent and establishes cause to deny her license application under Insurance Code section 1668, subdivision (b).

2. Pursuant to Insurance Code section 1668, subdivision (e), a license may be denied to any applicant who is "lacking in integrity." "Integrity" is defined by Black's Law Dictionary as, "soundness or moral principal or character ..." Respondent's conviction for theft of property (Factual Finding 2) was a crime that evinced a lack of integrity and establishes cause to deny her license application under Insurance Code sections 1668, subdivision (e).

3. Pursuant to Insurance Code section 1668, subdivision (i), a license may be denied if the applicant has "previously engaged in a fraudulent practice or act."

Respondent's conviction for theft of property (Factual Finding 2) establishes that respondent has previously engaged in a fraudulent practice or act and establishes cause for denying her license application under Insurance Code section 1668, subdivision (i).

4. Pursuant to Insurance Code sections 1668, subdivision (m) (3), a license may be denied to an applicant who has been convicted of a "public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property." Respondent's conviction for theft of property (Factual Finding 2) was for a public offense having as a necessary element a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property and establishes cause to deny her license application under Insurance Code sections 1668, subdivision (m)(3).

5. The Insurance Code licensing provisions which establish cause in the instant case to deny respondent a license were not designed to punish the errant applicant. They were designed to insure that the privileges granted under the license are not exercised in derogation of the public interest, and to keep the regulated activity clean and wholesome. (*Ready v. Grady* (1966) 243 Cal.App.2d 113, 117.) In other words, the Department may deny respondent the instant license in order to protect the public.

6. Where appropriate, the Department may deny an application for an unrestricted license but issue an applicant a restricted license. If it grants a restricted license, the Department may impose "any reasonable conditions upon the acquisition of such restricted license or the conduct of the holder thereof." (Ins. Code, §1742.)

7. Respondent presented some evidence of mitigation (Factual Finding 4).

8. Respondent presented significant evidence of rehabilitation (Fact Findings 5 through 8). However, respondent was on probation for more than half the time (August 2005 to August 2006) during which she has rehabilitated herself. Regarding the time respondent has spent on probation, the court in *In Re Gossage* (2000) 23 Cal.4th 1080, 1099, wrote:

Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole.

Thus, respondent's actions while on probation are afforded less weight in determining whether she has rehabilitated herself than her post-probation rehabilitative actions. Similarly, respondent's actions during probation are also afforded less weight regarding whether she presently is a danger to the public if licensed as a resident life agent.

9. Nevertheless, considering all of the above, including evidence of rehabilitation and mitigation, the circumstances surrounding respondent's conviction, the fact that her conviction was expunged, her age at the time of the crime, and her wholesale change in

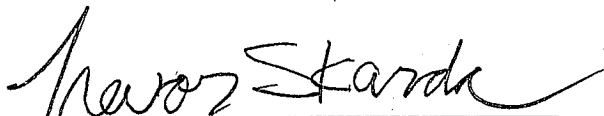
attitude, at this time, it would not be against the public interest to grant respondent a restricted license, with sufficient conditions designed to protect the public.

ORDER

Respondent's application for a license to act as a life agent is denied. However, respondent shall be issued a restricted license under Insurance Code section 1742 to act as a life agent, upon her compliance with all statutory and regulatory requirements for licensure. The restricted license shall be subject to the following conditions and restrictions:

1. Respondent shall obey all laws and regulations of the State of California, the United States of America, and every state and foreign government (and political subdivision thereof) having jurisdiction over respondent.
2. Respondent shall submit to the Insurance Commissioner a statement signed by any employing insurance agent certifying that the employer has read the decision of the commissioner that granted the right to a restricted license and that the employer will exercise close supervision over the activities for which an insurance license is required.
3. Respondent shall report in writing to the Department of Insurance, as directed by the Insurance Commissioner by separate written order issued during the term of the restricted license, such information concerning respondent's activities for which an insurance license is required as the commissioner shall deem appropriate to protect the public interest.
4. Respondent shall not be eligible to apply for the issuance of an unrestricted license or the removal of any of the conditions, limitations, or restrictions of the restricted license until two (2) years have elapsed from the effective date of issuance of the restricted license.

DATED: March 15, 2007



TREVOR SKARDA
Administrative Law Judge
Office of Administrative Hearings